

EXHIBIT 4

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WELLS FARGO & COMPANY; WELLS
FARGO ADVISORS, LLC; and WELLS
8 FARGO ADVISORS FINANCIAL NETWORK.
LLC
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA, NORTHERN DISTRICT
12

13 KENNISON WAKEFIELD, individually and
on behalf of all other similarly situated,
14

Plaintiff,

15 vs.
16

WELLS FARGO & COMPANY, WELLS
FARGO ADVISORS, LLC, and WELLS
FARGO ADVISORS FINANCIAL
18 NETWORK, LLC, and DOES 1 through 20,
19

Defendants.

Case No. RG13697146

**DEFENDANTS' ANSWER TO FIRST
AMENDED COMPLAINT**

Action Filed: September 26, 2013
Trial Date: None Set

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22 Defendants Wells Fargo & Company, Wells Fargo Advisors, LLC and Wells Fargo
23 Advisors Financial Network, LLC (collectively "Defendants") hereby answer the unverified First
24 Amended Complaint of Plaintiff Kennison Wakefield ("Plaintiff") as follows:
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26 **GENERAL DENIAL**

27 Pursuant to California Code of Civil Procedure § 431.30(d), which permits a
28 general denial to an unverified complaint, Defendants deny each and every material allegation in

ENDORSED
FILED
ALAMEDA COUNTY
OCT 28 2013

CLERK OF THE SUPERIOR COURT
S. Donnatt Raff
Deputy

1 each of the causes of action asserted in Plaintiff's First Amended Complaint. Defendants further
2 deny that any rights of Plaintiff or members of the putative class were violated or that they have
3 suffered any damages whatsoever as a consequence of Defendants' actions. Defendants also deny
4 that Plaintiff or members of the putative class are entitled to any legal or equitable relief
5 whatsoever.

6 Without admitting any of the allegations in Plaintiff's First Amended Complaint,
7 any wrongful conduct, or that they have the burden of proof on any of the following issues,
8 Defendants assert the following separate and independent affirmative defenses:

9 **AFFIRMATIVE DEFENSES**

10 **FIRST AFFIRMATIVE DEFENSE**

11 (Failure to State a Cause of Action)

12 1. The First Amended Complaint, and each purported cause of action
13 contained therein, is barred because it fails to state facts sufficient to constitute a cause of action
14 against one or more of the Defendants.

15 **SECOND AFFIRMATIVE DEFENSE**

16 (Res Judicata/Collateral Estoppel)

17 2. To the extent that any member of the putative class has litigated any
18 employment issue with any Defendant and a decision or judgment was issued in such litigation,
19 the First Amended Complaint, and each purported cause of action contained therein, is barred by
20 the doctrines of res judicata and/or collateral estoppel as to that individual.

21 **THIRD AFFIRMATIVE DEFENSE**

22 (Release/Accord & Satisfaction)

23 3. The First Amended Complaint, and each purported cause of action
24 contained therein, is barred to the extent that Plaintiff and/or members of the putative class have
25 released their claims and/or reached an accord and satisfaction.

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FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

3 4. Defendants are informed and believe and on that basis allege that Plaintiff
4 and/or members of the putative class have failed to mitigate damages, if any, and any damages
5 awarded should be reduced accordingly.

FIFTH AFFIRMATIVE DEFENSE

(Conditions Precedent)

8 5. The First Amended Complaint, and each purported cause of action
9 contained therein, is barred for failure to satisfy required conditions precedent.

SIXTH AFFIRMATIVE DEFENSE

(Mandatory Arbitration)

12 6. Plaintiff and/or members of the putative class signed documents and/or
13 entered into agreements that require them to arbitrate all or part of their disputes with Defendants
14 and, therefore, Plaintiff's claims are subject to mandatory arbitration.

SEVENTH AFFIRMATIVE DEFENSE

(Justification/Privilege)

17 7. Without waiving its position that Plaintiff bears the burden of proof on this
18 issue, Defendants allege that any actions taken by Defendants as alleged in the First Amended
19 Complaint were and are protected by the doctrines of justification and/or privilege, including
20 managerial privilege and competition privilege.

EIGHTH AFFIRMATIVE DEFENSE

(No Intentional Wrongdoing)

23 8. Defendants state that none of their acts were willful, malicious, in bad faith,
24 or motivated by ill-will or fraud. Rather, their acts were privileged, proper, and taken in
25 accordance with their rights as set forth by statute and/or law.

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NINTH AFFIRMATIVE DEFENSE

(Punitive Damages Would Be Unconstitutional)

3 9. Plaintiff's request for punitive damages is barred by the First, Fifth, Eighth,
4 and Fourteenth Amendments to the Constitution of the United States, and is invalid on its face
5 and/or as applied to Defendants because it contravenes the rights guaranteed under the aforesaid
6 amendments.

TENTH AFFIRMATIVE DEFENSE

(No Oppression, Fraud or Malice)

9 10. Plaintiff is not entitled to recover punitive or exemplary damages because
10 Plaintiff has failed to allege facts sufficient to state a claim for such damages or to show that
11 Defendants are guilty of oppression, fraud, or malice, or that Defendants acted with reckless
12 indifference to Plaintiff's rights.

ELEVENTH AFFIRMATIVE DEFENSE

(Laches, Waiver, Estoppel, Unclean Hands)

15 11. The First Amended Complaint, and each purported cause of action
16 contained therein, is barred, in whole or in part, by the doctrines of laches, waiver, estoppel, and/or
17 unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

(No Basis For Class Certification)

20 12. The First Amended Complaint, and each purported cause of action
21 contained therein, is barred, in whole or in part, because this case is not appropriate for class
22 treatment and Plaintiff has not satisfied the requirements of California Code of Civil Procedure §
23 382 or Rule 23 of the Federal Rules of Civil Procedure.

THIRTEENTH AFFIRMATIVE DEFENSE

(Inadequate Representative)

26 13. The First Amended Complaint, and each purported cause of action
27 contained therein, is barred because Plaintiff is not an adequate class representative as required for

1 class certification pursuant to California Code of Civil Procedure § 382 or Rule 23 of the Federal
2 Rules of Civil Procedure.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 (No Scienter)

5 14. Without admitting that any misrepresentations were made, the First
6 Amended Complaint, and each purported cause of action contained therein, is barred because to
7 the extent that Defendants made any alleged misrepresentations, such misrepresentations were not
8 made with the requisite state of mind.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 (Reliance)

11 15. Without admitting that any misrepresentations were made, the First
12 Amended Complaint, and each purported cause of action contained therein, is barred because to
13 the extent that Defendants made any alleged misrepresentations, Plaintiff and/or members of the
14 putative class did not rely to his detriment and/or his reliance was not reasonable.

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

16 (Fraud Lack of Particularity)

17 16. The First Amended Complaint, and each purported cause of action
18 contained therein, is barred because Plaintiff fails to plead fraud with particularity and otherwise
19 fails to identify properly the alleged false or misleading statements of which Plaintiff complains.

20 **SEVENTEENTH AFFIRMATIVE DEFENSE**

21 (Plaintiff's Knowledge)

22 17. Without admitting that any misrepresentations were made, the First
23 Amended Complaint, Defendants are not liable because Plaintiff and/or members of the putative
24 class knew or had reason to know of the true facts that were allegedly misrepresented or omitted
25 and upon which their claims are based, and Defendants had reason to believe that Plaintiff and/or
26 members of the putative class were in possession of this information.

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EIGHTEENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative or Internal Remedies)

3 18. The First Amended Complaint, and each purported cause of action
4 contained therein, is barred, in whole or in part, to the extent Plaintiffs and/or members of the
5 putative class failed to properly and/or timely exhaust the administrative procedures in the alleged
6 Plans or internal remedies.

NINETEENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

9 19. The First Amended Complaint, and each purported cause of action
10 contained therein, is barred, in whole or in part, by the relevant statutes of limitations, including
11 without limitation the statute of limitations contained in California Code of Civil Procedure
12 sections 335.1, 337, 338, 339 and/or 340 and as determined by the Ninth Circuit for claims for
13 benefits under the Employee Retirement Income Security Act of 1974 (“ERISA”).

TWENTIETH AFFIRMATIVE DEFENSE

(ERISA pre-emption)

16 20. To the extent the claims of Plaintiff and/or members of the putative class
17 are premised on their alleged entitlement to retirement benefits or for benefits under Plans subject
18 to ERISA, they are pre-empted.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Standing)

21 21. Plaintiff's claims fail, in whole or in part, to the extent that Plaintiff lacks
22 standing to assert the claims raised.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Offset)

25 22. The alleged damages of Plaintiff and/or members of the putative class are
26 barred or reduced by the doctrine of offset to the extent they owe Defendants any amount and/or
27 they receive, are entitled to, or become entitled to, compensation from another person as payment

1 or reimbursement for the alleged damages and/or for benefits received as a result of the
2 complained-of actions.

3 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

4 (Improper Joinder)

5 23. The First Amended Complaint, and each purported cause of action
6 contained therein, fails for improper joinder of Defendants.

7 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

8 (Workers' Compensation Exclusive Remedy)

9 24. The First Amended Complaint, and each purported cause of action
10 contained therein, is barred, in whole or in part, because the exclusive remedy for workplace
11 injuries of Plaintiff and/or members of the putative class, including emotional injuries, is set forth
12 in the Worker's Compensation laws of the State of California or any other relevant state, including
13 without limitation, California Labor Code Section 3200 *et seq.*

14 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

15 (Choice of Law)

16 25. The First Amended Complaint, and each purported cause of action
17 contained therein, to the extent they are not preempted by federal law, fail under a choice of law
18 analysis and to the extent that North Carolina and/or another state's law governs.

19 Defendants state that they currently have insufficient knowledge or information on
20 which to form a belief as to whether they may have additional, as yet unstated, affirmative
21 defenses available. Defendants reserve the right to assert additional affirmative defenses in the
22 event that discovery indicates they would be appropriate.

23
24 WHEREFORE, Defendants respectfully request that:

25 (a) Plaintiff take nothing by his First Amended Complaint and the action be
26 dismissed with prejudice;

27 (b) Defendants be awarded their costs and expenses incurred in defending this
28 action, together with reasonable attorneys' fees; and

1 (c) Defendants be granted such other and further relief as this Court may
2 deem just and proper.
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4 DATED: October 28, 2013

MUNGER, TOLLES & OLSON LLP
TERRY E. SANCHEZ
PUNEET K. SANDHU

6 By:
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PUNEET K. SANDHU

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9 Attorneys for WELLS FARGO & COMPANY; WELLS
10 FARGO ADVISORS, LLC; and WELLS FARGO
11 ADVISORS FINANCIAL NETWORK, LLC
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PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Los Angeles, State of California. My business address is 355 South
Grand Avenue, Thirty-Fifth Floor, Los Angeles, CA 90071-1560.

5 On October 28, 2013, I served true copies of the following document(s) described as
DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT on the interested parties in
6 this action as follows:

William I. Edlund, Esq.

Robert H. Bunzel, Esq.

Robert H. Baker, Esq.
Charles G. Miller, Esq.

Sony B. Barari, Esq.

Sony B. Barari, Esq.
BARTKO, ZANKEL, BUNZEL & MILLER

One Embarcadero Center, Suite 800

Embarcadero Center, Suite
San Francisco, CA 94111

11 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
12 persons at the addresses listed above and placed the envelope for collection and mailing, following
13 our ordinary business practices. I am readily familiar with the firm's practice for collecting and
processing correspondence for mailing. On the same day that the correspondence is placed for
collection and mailing, it is deposited in the ordinary course of business with the United States
Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 28, 2013, at Los Angeles, California.

Karen Easton
Karen Easton